ATTACHMENT A

THE PROPOSED DECISION
BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Appeal of Health  
Premium Reimbursement of:  

DONNIE G. JEFFRIES,  
Respondent,  

and  

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION.  
Respondent.

Case No. 2018-0530  
OAH No. 2018110125

PROPOSED DECISION

This matter was heard before Administrative Law Judge Marcie Larson, Office of  
Administrative Hearings, State of California, on May 22, 2019, in Sacramento, California.

The California Public Employees' Retirement System (CalPERS) was represented by  
Charles Glauberman, Senior Attorney.

There was no appearance by or on behalf of respondents Donnie G. Jeffries  
/respondent/ or the California Department of Corrections and Rehabilitation (Department).  
Respondents were duly served with a Notice of Hearing. The matter proceeded as a default  
against respondents pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for  
decision on May 22, 2019.

ISSUE

The issue on appeal is whether CalPERS is correct in its determination that  
respondent is not eligible to receive health premium reimbursement of the employer share  
contribution from July 1, 2009, through August 1, 2016.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED June 21, 2019
FACTUAL FINDINGS

Procedural History

1. On or about 1988, respondent became a member of CalPERS through his employment with the Department of Fair Employment and Housing. On October 24, 2005, respondent was employed by the City of Oakland (Oakland), and continued to be a member of CalPERS. Respondent received health benefits through his employment with Oakland. On November 15, 2008, respondent permanently separated from Oakland. He elected to continue his health benefits through the Consolidated Omnibus Budget Reconciliation Act (COBRA), which allowed him to continue to receive health coverage for a period of time.

2. On March 20, 2009, respondent signed, and thereafter, filed with CalPERS an application for service retirement from his employment with Oakland. His effective retirement date was March 10, 2009. Respondent elected to enroll in retiree health benefits through Oakland, effective on June 1, 2009.

3. On June 1, 2009, respondent was employed by the Department. On June 24, 2009, respondent signed an application for reinstatement from service retirement (Reinstatement Application) for employment with the Department, effective on June 1, 2009. Respondent left his position with the Department on June 30, 2009. He retired from service with the Department effective on July 1, 2009.

4. On or about January 10, 2011, respondent contacted CalPERS and elected to cancel his retiree health benefits with Oakland, effective on February 1, 2011.

5. On June 1 and July 6, 2015, respondent contacted CalPERS and inquired as to whether he was entitled to retiree health benefits through CalPERS due to his employment with the Department in June 2009. CalPERS informed respondent that his CalPERS account did not list any employment or retirement information for CDCR. The following year, on February 29, 2016, respondent visited a CalPERS office and again inquired about retiree benefits.

1 The Statement of Issues alleges that respondent became a member of CalPERS on April 6, 1998, through his employment with Santa Clara Valley Water District. However, respondent “MyCalPERS” history lists respondent’s first state employment on August 15, 1988, with the Department of Fair Employment and Housing.
health benefits based on his June 2009 employment with the Department. He provided CalPERS a letter dated July 24, 2015, from the Department that confirmed respondent was employed by the Department from June 1 through 30, 2009. Thereafter, he provided a copy of his W-2 showing his income from the Department in 2009.

**Actions Taken by CalPERS**

6. As a result of the information provided by respondent, CalPERS contacted the Department to confirm whether respondent had been employed by the Department in June 2009. On or about March 1, 2016, CalPERS received confirmation from the Department that respondent had been employed for one month in June 2009. On or about April 28, 2016, respondent contacted CalPERS and requested retroactive payment of the state's health benefit contribution from July 1, 2009, through August 1, 2016, that would have been paid by the state if respondent had been enrolled in retiree health benefits as a result of his employment with the Department.

7. Robin Owens is an Associate Governmental Program Analyst (AGPA), in the Retirement Benefits, Taxes and Optional Members Retirement Services Unit for CalPERS. Amelia Martinez is an AGPA in the Health Account Management Division for the Enrollment and Eligibility Unit for CalPERS. Both testified at hearing. Ms. Owens and Ms. Martinez explained the actions CalPERS took to address respondent's request for reimbursement and to correct respondent's reinstatement and subsequent retirement date from the Department.

8. Ms. Owen explained that after receiving information from respondent and the Department regarding respondent's employment for one month in June 2009, CalPERS reinstated respondent to active employment for the period of June 1 through 30, 2009, and amended his effective retirement date to July 1, 2009. As a result of the adjustment, respondent received an additional month of service credit. He also became eligible to enroll in retiree health benefits. Ms. Martinez explained that when an error occurs such as in respondent's case, the member is given the option to retroactively enroll in health benefits for the period of time in which he was eligible. Respondent would have been eligible on July 1, 2009, after he separated from the Department. If he so elected, respondent would have been responsible for retiree health premiums, and the Department would have paid the employer contribution directly to the health insurance company. Respondent was also given the option to begin retiree health benefits on a current basis, without retroactive application.

9. Respondent elected to begin retiree health benefits on a current basis. On July 28, 2016, respondent was sent a letter from CalPERS confirming that his retiree health benefits through CalPERS would take effect on August 1, 2016.

**Respondent's Request for Reimbursement**

10. After electing to enroll in retiree health benefits on a current basis, respondent requested that CalPERS reimburse for "retroactive healthcare premiums he was entitled to"
receive from July 1, 2009 to August 1, 2016.” Respondent did not submit to CalPERS any evidence of healthcare premiums he paid during that time period. CalPERS denied his request on December 13, 2017. CalPERS explained that pursuant to Government Code section 22870, subdivision (c):

The contribution of each employee or annuitant shall be the total cost per month of the benefit coverage afford to him [ . . . ] under the health benefit plan or plans in which he [ . . . ] is enrolled less the portion thereof to contributed [sic] by the employer. The employer contribution for each employee or annuitant shall commence on the effective date of enrollment.

CalPERS further explained that as a result of this statute, respondent was “not eligible to receive a monetary disbursement in lieu of the employer share contribution towards health premiums while not enrolled in a CalPERS sponsored health plan.” CalPERS also explained that the health premiums are paid by respondent’s former employer, not CalPERS. As a result, “CalPERS is not in a position to disburse monies contributed by [his] former employer.”


Discussion

12. When all the evidence is considered, CalPERS correctly determined that respondent is not eligible to receive health premium reimbursement of the employer share contribution from July 1, 2009, through August 1, 2016. Upon learning of the mistake that resulted in respondent not being reinstated from June 1 through 30, 2009, based on his employment with the Department, CalPERS corrected the mistake. Respondent was reinstated effective June 1, 2009, and retired from the Department effective July 1, 2009. As a result of the correction, respondent was eligible for retiree health benefits. Respondent had two options: (1) elect retroactive health benefits starting on July 1, 2009, whereby he would be responsible for the annuitant portion of the premiums and the Department would directly pay the health insurance carrier for the employer’s portion; or (2) elect health benefits on a current basis. He chose the latter.

13. The law does not allow respondent to receive reimbursement for monetary disbursement in lieu of the employer share contribution towards health premiums while not enrolled in a CalPERS sponsored health plan. As a result, respondent is not entitled to reimbursement of the monies the Department would have paid a health insurance carrier had respondent been enrolled in a CalPERS sponsored health plan.
LEGAL CONCLUSIONS

Applicable Law

BURDEN OF PROOF

1. “As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence. . . .” (McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044; Evid. Code, § 500.) In this matter, respondent bears the burden of establishing that CalPERS incorrectly determined that he is ineligible to receive health premium reimbursement of the employer share contribution from July 1, 2009, through August 1, 2016.

PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT

2. The provision of healthcare benefits to state employees is governed by the Public Employees' Medical and Hospital Care Act (Gov. Code, § 22750 et seq.) (PEMHCA). The Board of Administration (Board) for CalPERS is responsible for administering the PEMHCA, and requires the Board to provide health benefits for state employees, dependents, and annuitants, as well as for employees and annuitants of contracting public agencies which elect to contract with CalPERS for health benefit coverage. (Gov. Code, §§ 22772 subd. (a)(1), 22800, 22807; Cal. Code Regs., tit. 2, § 599.515, subd. (a).)

3. Pursuant to Government Code section 22777, a “‘Health benefit plan’ means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.”

4. Pursuant to Government Code section 22794, the Board “shall have all powers reasonably necessary to carry out the authority and responsibilities expressly granted or imposed upon it under this part.”

5. Government Code section 22796 provides:

(a) The board shall, pursuant to the Administrative Procedure Act, adopt all necessary rules and regulations to carry out the provisions of this part including, but not limited to, any of the following:

(1) Regulations establishing the following:

(A) The scope and content of a basic health benefit plan.

(B) Reasonable minimum standards for health benefit plans.
(C) The time, manner, method, and procedures for determining whether approval of a health benefit plan should be withdrawn.

(2) Regulations pertaining to any other matters that the board may be expressly authorized or required to provide for by rule or regulation by the provisions of this part.

(b) In adopting rules and regulations, the board shall be guided by the needs and welfare of individual employees, particular classes of employees, the state and contracting agencies, as well as prevailing practices in the field of medical and hospital care.

6. Government Code section 22870 provides:

(a) The state and each employee or annuitant shall contribute a portion of the cost of providing the benefit coverage afforded under the approved health benefit plan in which the employee or annuitant is enrolled.

(b) An annuitant is entitled to only one employer contribution. If more than one annuitant is receiving an allowance as the survivor of the same employee or annuitant, there shall be only one employer contribution with respect to all of those annuitants.

(c) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the health benefit plan or plans in which he or she is enrolled less the portion thereof to be contributed by the employer. The employer contribution for each employee or annuitant shall commence on the effective date of enrollment.

CORRECTION OF ERRORS AND OMISSIONS

7. Government Code section 20160 provides:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the
correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an “error or omission” correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.
(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

8. Government Code section 20164 provides:

(a) The obligations of this system to its members continue throughout their respective memberships, and the obligations of this system to and in respect to retired members continue throughout the lives of the respective retired members, and thereafter until all obligations to their respective beneficiaries under optional settlements have been discharged. The obligations of the state and contracting agencies to this system in respect to members employed by them, respectively, continue throughout the memberships of the respective members, and the obligations of the state and contracting agencies to this system in respect to retired members formerly employed by them, respectively, continue until all of the obligations of this system in respect to those retired members, respectively, have been discharged. The obligations of any member to this system continue throughout his or her membership, and thereafter until all of the obligations of this system to or in respect to him or her have been discharged.

(b) For the purposes of payments into or out of the retirement fund for adjustment of errors or omissions, whether pursuant to Section 20160, 20163, or 20532, or otherwise, the period of limitation of actions shall be three years, and shall be applied as follows:

(1) In cases where this system makes an erroneous payment to a member or beneficiary, this system’s right to collect shall expire three years from the date of payment.

(2) In cases where this system owes money to a member or beneficiary, the period of limitations shall not apply.

(c) Notwithstanding subdivision (b), in cases where payment is erroneous because of the death of the retired member or beneficiary or because of the remarriage of the beneficiary, the
period of limitation shall be 10 years and shall commence with the discovery of the erroneous payment.

(d) Notwithstanding subdivision (b), where any payment has been made as a result of fraudulent reports for compensation made, or caused to be made, by a member for his or her own benefit, the period of limitation shall be 10 years and that period shall commence either from the date of payment or upon discovery of the fraudulent reporting, whichever date is later.

(e) The board shall determine the applicability of the period of limitations in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error or omission.

9. As set forth in Factual Findings 1 through 9, 12 and 13, and the Legal Conclusions as a whole, respondent failed to establish that CalPERS incorrectly determined that he is ineligible to receive health premium reimbursement of the employer share contribution from July 1, 2009, through August 1, 2016. As a result, respondent’s appeal must be denied.

ORDER

The appeal of respondent Donnie G. Jeffries is denied.

DATED: June 20, 2019

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings